

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

GTE North Incorporated  
GTE South Incorporated (GTE Illinois)  
and Globaleyes Telecommunications, Inc.  
(GlobalEyes)

00-0004

Joint Petition for Approval of an Interconnection  
Agreement dated November 16, 1999, pursuant to  
47 USC § 252.

**SUPPLEMENTAL VERIFIED STATEMENT OF JOHN M. GARVEY**

My name is John M. Garvey and I am employed by the Illinois Commerce Commission as a Policy Analyst in the Telecommunications Division. I graduated (with honors) from Michigan State University with a Bachelor of Arts in Social Science in 1992. In 1995 I was awarded a Master of Science in Public Policy from the London School of Economics. In 1997, I was awarded a Master of Science in Regulation also from the London School of Economics. On February 1, 1999, I was awarded a Juris Doctor from DePaul University College of Law. One of my responsibilities as an analyst is to review negotiated agreements and provide a recommendation as to their approval.

I have reviewed the Interconnection Agreement, dated November 16, 1999, between GTE and Globaleyes. The agreement establishes the financial and operational terms for: the physical interconnection between GTE and Globaleyes' networks on mutual and reciprocal compensation; unbundled access to GTE network

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Exhibit No. 1

Witness

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elements, including GTE's operations support systems functions; physical collocation; number portability; resale; and a variety of other business relationships.

The purpose of my verified statement is to examine the agreement based on the standards set forth in section 252(e)(2)(A) of the 1996 Act. Specifically, this section states:

The State commission may only reject an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that-

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

## **I. Approval under Section 252(e)**

### **A. Discrimination**

The first issue that must be addressed by the Commission in approving or rejecting a negotiated agreement under Section 252(e)(2)(A) is whether it discriminates against a telecommunications carrier that is not a party to the agreement.

Discrimination is generally defined as giving preferential treatment. In previous dockets, Staff has taken the position that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the agreement. I recommend that the Commission use the same approach when evaluating this negotiated agreement.

A carrier should be deemed to be a similarly situated carrier for purposes of this agreement if telecommunications traffic is exchanged between itself and GTE for termination on each other's networks and if it imposes costs on GTE that are no higher than the costs imposed by Globaleyes. If a similarly situated carrier is allowed to purchase the service(s) under the same terms and conditions as provided in this contract, then this contract should not be considered discriminatory. Evaluating the term discrimination in this manner is consistent with the economic theory of discrimination. Economic theory defines discrimination as the practice of charging different prices (or the same prices) for various units of a single product when the price differences (or same prices) are not justified by cost. See, Dolan, Edwin G. and David E. Lindsey, Microeconomics, 6<sup>th</sup> Edition, The Dryden Press, Orlando, FL (1991) at pg. 586. Since Section 252(i) of the 1996 Act allows similarly situated carriers to enter into essentially the same contract, this agreement should not be deemed discriminatory.

#### **B. Public Interest**

The second issue that must be addressed by the Commission in approving or rejecting a negotiated agreement under Section 252(e)(2)(A) is whether it is contrary to the public interest, convenience, and necessity. I recommend that the Commission examine the agreement on the basis of economic efficiency, equity, past Commission orders, and state and federal law to determine if the agreement is consistent with the public interest.

In previous dockets, Staff took the position that negotiated agreements should be considered economically efficient if the services are priced at or above their Long Run Service Incremental Costs ("LRSICs"). Requiring that a service be priced at or above its LRSIC ensures that the service is not being subsidized and complies with the Commission's pricing policy. All of the services in this agreement are priced at or above their respective LRSICs. Therefore, this agreement should not be considered economically inefficient.

On January 26, 2000, Staff submitted the following data requests to GTE:

1. Article IX, Section 2.4 states that "[a] cageless collocation arrangement allows a CLEC, using GTE approved vendors, to install equipment in single bay increments in an area designated by GTE." [Emphasis added.]

(a) Please specify whether this language would preclude a CLEC from installing equipment itself, rather than through a GTE approved subcontractor. If the language would preclude a CLEC from installing the equipment itself, please cite the FCC authority prescribing such limitation on a CLEC's ability to install its own equipment.

(b) The FCC's Advanced Services Order ("ASO") states that incumbent LECs must allow competitors to collocate in any unused space.<sup>1</sup> Further, the ASO precludes the incumbent LEC from requiring competitors to collocate in a room or isolated space separate from ILEC's equipment.<sup>2</sup> Will GTE modify its language to allow for cageless collocation in any unused space? If not, why?

2. (a) In Article IX, Section 4.3.2 GTE precludes GLOBALEYES from collocating equipment that is "designed exclusively for switching or enhanced services...." [Emphasis added.] In contrast, the ASO precludes collocation of equipment that is "used solely for switching or enhanced services." [Emphasis added.]<sup>3</sup> Will GTE replace the word "designed" with "used"? If not, please explain why.

(b) In Article IX, Section 4.3.2 GTE requires GLOBALEYES' equipment be compliant with NEBS 3, GR-1089-CORE, GTE network reliability standards, fire and safety codes, GTE practices for AC/DC bonding and grounding requirements, and the industry standard requirements shown in the publications listed in (a)-(h). In contrast,

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<sup>1</sup> ASO at ¶42.

<sup>2</sup> Id.

<sup>3</sup> ASO at ¶30.

the ASO states that NEBS Level 1 requirements are generally sufficient.<sup>4</sup> Further, the ASO precludes the use of reliability and performance standards as a basis for denying collocation.<sup>5</sup> And in no circumstances shall a CLEC's equipment be required to meet safety standards that are more stringent than the standards imposed on its own equipment.<sup>6</sup> Please state whether GTE's own equipment is required to meet the standards as set forth in Section 4.3.2. In addition, please explain the nature of the specific standards as set forth in Section 4.3.2 (i.e., are the standards used for safety, performance, or reliability?).

3. Article IX, Section 4.4 and Section 4.6.2 allow for a GTE employee to be present when a CLEC is accessing its equipment. The ASO precludes the use of escorts.<sup>7</sup> Is GTE willing to change its language to comport with the ASO proscription? If not, why?

4. Article IX, Section 4.6.2 gives GTE the complete authority to establish the appropriate level of security in each wire center or access tandem. The ASO though restricts security measures to that which GTE maintains at their own premises either for their own employees or for authorized contractors.<sup>8</sup> Will GTE amend its language to reflect this limitation on its discretion?

5. Article IX, Section 5.2 limits collocation to "existing suitable space". In contrast, the ASO allows a CLEC to collocate in "any unused space".<sup>9</sup> Will GTE amend its language to reflect the FCC order? If not, why?

On February 3, 2000, GTE submitted their responses. After reviewing GTE's responses, Staff concluded that in three circumstances language in the instant agreement needs to be modified in order to comport with the FCC's Advanced Services Order. A letter was submitted to the parties on February 3, 2000 via e-mail indicating the necessity of such a change and proffering FCC-compliant substitute language.

After further discussions with GTE, substitute language was agreed upon that would satisfy Staff's concerns. The additions and modifications are as follows:

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<sup>4</sup> ASO at ¶35.

<sup>5</sup> *Id.*

<sup>6</sup> ASO at ¶36.

<sup>7</sup> ASO at ¶49.

<sup>8</sup> ASO at ¶47.

1. **Article IX, Section 2.4**  
Add after second sentence: GTE approval of vendors utilized by CLECs shall be based on the same criteria GTE uses in approving contractors for its own purposes except with respect to security arrangements, which may be based on the same criteria GTE employs for its own employees.
2. **Article IX, Section 4.6.2**  
Modify third sentence: GTE also reserves the right:... (b) pursuant to Article IX, Section 4.4, to provide a GTE employee, agent or contractor to accompany and observe GLOBALEYES at no cost to GLOBALEYES.
3. **Article IX, Section 5.2**  
Add after second sentence: GTE will not deny a CLEC's collocation request if only unused, unconditioned space is available for collocation. Subject to technical feasibility limitations, GTE will modify the unused, unconditioned space into suitable, unused space and then permit the CLEC to collocate in that space.

In light of the referenced modifications agreed to by the parties, I have no reason to conclude that this agreement is inequitable, inconsistent with past Commission Orders, or in violation of state or federal law. Therefore, I recommend that the Commission approve this agreement subject to the implementation requirements of the next section.

## **II. Implementation**

In order to implement the GTE-Globaleyes agreement, the Commission should require GTE to, within five days from the date the agreement is approved, modify its

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<sup>9</sup> ASO at ¶42.

tariffs to reference the negotiated agreement for each service. Such a requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the agreement. The following sections of GTE Illinois' tariffs should reference the GTE -Globaleyes agreement:

**Agreements with Telecommunications Carriers (ICC No. 10 Section 18).**

Furthermore, the Commission should require GTE to, within ten days from the date the agreement is approved, modify the instant agreement by incorporating the substitute language and modifications referenced above.

Finally, the Commission should require GTE to file a copy of the approved agreement with the Chief Clerk's Office, within five days from the date the agreement is approved. The Chief Clerk should be directed to place the agreement in a separate binder. Such a requirement is also consistent with the Commission's Orders in previous negotiated agreement dockets.

For the reasons set forth above, I recommend that the Commission approve this agreement under Section 252(e) of the 1996 Act.